In the High Court of Uttaranchal, at Nainital.

First Appeal No. 428/2001

Old F.A.No. 384 of 1997

1- State of U.P. through Collector Dehradun,

2- The Director, Sports College, Lucknow

U.P.

--- Defendants/Appellants.

Versus

Ram Prasad Uniyal S/o BrijLal
Village Raipur District Dehradun,
Garhwal Attorney Brishan Singh S/o Vijay Singh
Batta Mussorrie, District Dehradun -Claimant/Respondent.

Smt. Seema Sirohit, learned Brief Holder for the appellants.
Sri. Niranjan Bhatt, Advocate for the respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 24-5-2006

This appeal has been preferred against the judgment and award dated 28-4-1997 passed by the Additional District Judge, Dehradun in L.A.R.No. 190 of 1991, which was filed against the award dated 28-4-1990 passed by the Collector/Land Acquisition Officer, Dehradun.

2- Brief facts of the case are that the land of Village Raipur, Parvadoon, Dehradun measuring 66.99 acres, including the land of the claimant/respondent Ram Prasad Uniyal was acquired by the State for the purpose of establishing a Sport College, for which Notification U/S 4(1) of the Land Acquisition Act was published in the local newspapers on 18-3-1988, while notification U/S 6 of the Act was published on 30-4-1988, and possession of the acquired properties was taken by the State of U.P. on 30-12-1988. The land Acquisition Office relying on the sale deed dated 19-7-1986 executed by Bhupendra and Surendra in favour of Sri M.M. Ghoshal in respect of 0.19 acre land for a consideration on Rs. 20,000/- fixed the market rate of the land in question at Rs. 1,05,263.15 per acre. Objections were filed by the different owners of the land before the Collector, requesting for reference under Section 18 of the Land Acquisition Act to the effect that their land was in every respect fit for residential purposes as it had all the

facilities of roads, light and water, market and important institutions of Government of India are located near the land in question and employees of these institutions have their residential colonies nearby and that the compensation paid to them is on a very low side basing on a wrong exemplar sale deed of lower value while they should have been paid compensation on the basis of exemplar sale-deed giving highest value, and claimed atleast Rs. 4,00,000/- per acre for their land equally and not different rates according to the different type of land as fixed by the Special Land Acquisition Officer. Before the reference Court the State has alleged that the land in question is away from abadi and the so called institutions of Government of India and at the time of acquisition there was no road in the land and proper compensation has been paid to the owners of the land on the basis of exemplar sale-deed.

3- The Reference Court framed issued in the references pertaining to all the land in question and consolidated all the references and L.A. Reference Case No. 502/1991 was made the leading case. Thereafter parties adduced their evidence in support of their contentions. The landowners deposed that they have been paid very low compensation. They also alleged that their land is having the facilities of water, electricity the road. The land in question is within Cantoment area and development market also adjoins. They also stated that Bank, School, Bus Stop, Ordnance Factory, Jal Sansthan and residential colonies also exist there. The claimants claimed compensation @ Rs. 5,00,000/- per acre. They also filed certified copies of two sale-deeds of land near the acquired land giving the rate of land of the Village @ Rs. 3,92,400/- and Rs. 4,00,000/- per acre executed on 31-8-1987 and 29-8-1987 respectively. The Reference Court after hearing learned counsel for parties and perusing the material on record, was of the opinion that the compensation awarded by the Special Land Acquisition Officer was inadequate, therefore allowed the references. The Reference Court fixed the market value of the acquired land as Rs. 3,73,000/- per acre. The Reference Court also ordered 25% deduction from the actually enhanced amount of

compensation with regard to largeness of area, park, roads and school factors and on this balance amount, the petitioner was awarded solatium @ 30%, additional amount @ 12% with interest @ 9% for first year after taking over possession by the State and for the rest period awarded interest @ 15% per annum till payment.

4- Feeling aggrieved the State has filed the appeal before the Allahabad High Court, which on creation of new State, has been transferred to this Court for hearing and disposal. The appeal has been filed on the ground that the land under acquisition forms part of a large area of land measuring about 69 acres and the Special Land Acquisition Officer had determined the fair market value of the land on the basis of circle rate and good exemplars having regard to the nature, quality and location of the land and the Reference Court has erred in enhancing the market value of land to R. 3,73,000/-. It was also pleaded that the land under acquisition forms part of a large area of land measuring about 69 acres, most of which lies near forest and bed of seasonal river and such the entire area is not similar in nature and quality and deducation of 25% on account of the largeness of the land is also insufficient.

5- However, during arguments in the appeal, the learned counsel for the parties agreed that the appeal be decided after allowing 33 1/3% deduction instead of 25% deduction. In this context, a reference may be made to the case reported in **(1996) 9 Supreme Court Cases 640, Basavva (SMT) and others vs. Special Land Acquisition Officer and others** referring to the other decisions of Hon'ble Supreme Court, held deduction between 33½ to 53% from market value for development charges to be valid and even approved the additional 12% deduction by the High Court above this limit. The Hon'ble Apex Court in the case **H.P. Housing Board Versus Bharat S. Negi and others,** reported in **(2004) 2 Supreme Court Cases, page 184** has further held that as all the sale instances are of small pieces of land and the acquisition is of the large piece of land, a deduction of 33-1/3% must be made towards development cost. In view of the law laid down by the Apex Court in H.P. Housing Board's case (supra), and also looking

the nature, quality and large area of acquired land, we accordingly hold that the compensation should be paid to the respondent/owner of the land after making deduction of 33-1/3% from the difference of compensation amount enhanced by the learned Reference Court in respect to market value of the land in question on which solatium, additional compensation and interest shall also be paid as directed by the Reference Court.

6- It may also be noted here that this Court vide judgment and order dated 20-9-2004 rendered in Bunch cases of F.A. No. 81 of 2001 and other appeals, instituted in respect of the acquired land in question, has partly allowed the appeals and modified the impugned judgment and award of the Reference Court to the extent that the deduction shall be made @ 33 -1/3% instead of 25%. In other respects the impugned judgment was confirmed.

7- In view of above the appeal is allowed partly. The impugned judgment and order dated 28-4-1997passed by Reference Court in L.A.Reference No. 190/91, in respect of the land under acquisition is modified to the extent that the deduction shall be made in the market rate assessed by the Reference Court @ 33-1/3% instead of 25%. In other respects the finding of the Reference Court is confirmed. No order as to cost.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

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